

OFFICE OF THE ATTORNEY GENERAL

83-00177



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FEB 7 1993

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Honorable Ronald L. Burns,
Revenue Commissioner, Coffee County
P. O. Box 361
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Ad Valorem Taxes -- Taxation

Temporary absences from home by owner do not necessarily require change in its classification.

Classification in such instances depends on intent of owner and is a question of fact to be determined by tax assessor.

Dear Mr. Burns:

In your request for an opinion dated January 12, 1983 you state that §40-8-1, Code of Alabama 1975, defines residential property as "only real property used exclusively as a single-family dwelling by the owner thereof". You ask whether a house may remain classified as Class III property where the owner thereof is required to be away from this home for an extended period of time during which the house remains vacant. You cite as examples military personnel who are transferred to another base temporarily, older persons who are in the hospital or nursing home, and individuals who receive temporary job transfers to another location.

Since the criteria for eligibility for the homestead exemption is similar to the criteria required for classification of property as Class III (i.e. in both instances the property must be occupied by the owner-taxpayer), previous opinions of this office with regard to the applicability of the homestead exemption contain reasoning which may be adapted to your question. In Quarterly Report of the Attorney General, Volume 8, Page 268, this office quoted from the case of Fuller v. American Supply Company, 185 Ala. 512, 64 So. 549:

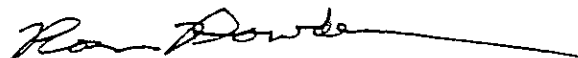
Before the statute in question it was never supposed that a homestead exemption could be lost by temporary withdraw-

als, as, for example, where the owner leaves for the purpose of educating his children, to recuperate his health, to travel in foreign parts, to attend a camp meeting, to engage temporarily in trade, to seek work, to raise a crop, or to hold official position, intending all the while to return. Occasions for some such absences come to nearly everyone, and they are not regarded as constituting an abandonment. In such cases the owner was regarded in law as in the actual occupancy of his homestead. Any other interpretation of such absences would make of the homestead, not a refuge, but a prison. An owner, absent on such occasion, has all along been commonly regarded as an actual occupant, and he must be still so regarded, unless the statute has clearly provided to the contrary. A homestead, once acquired, is presumed to continue until a change, *facto et animo*, is shown.

This office in the opinion cited above and in Quarterly Report of the Attorney General, Volume 8, Page 57, has stated that the abandonment of a homestead is a question of fact to be determined by the tax assessor on a case by case basis. Bearing the above reasoning with regard to the homestead exemption in mind, it is the opinion of this office that a temporary absence from home should not necessarily cause a classification of property to be changed from Class III. This depends upon the facts of each case to be determined by the tax assessor and is primarily a question of whether the property owner intends to abandon his home.

Sincerely yours,

CHARLES A. GRADDICK, Attorney General
State of Alabama
BY-



RON BOWDEN
Assistant Attorney General

RB:jt